

THE BANNING OF ANTI-PERSONNEL LANDMINES

The legal contribution of the
International Committee of the Red Cross

EDITED BY

LOUIS MARESCA
STUART MASLEN



CAMBRIDGE
UNIVERSITY PRESS

PUBLISHED BY THE PRESS SYNDICATE OF THE UNIVERSITY OF CAMBRIDGE
The Pitt Building, Trumpington Street, Cambridge, United Kingdom

CAMBRIDGE UNIVERSITY PRESS
The Edinburgh Building, Cambridge CB2 2RU, UK <http://www.cup.cam.ac.uk>
40 West 20th Street, New York, NY 10011–4211, USA <http://www.cup.org>
10 Stamford Road, Oakleigh, Melbourne 3166, Australia
Ruiz de Alarcón 13, 28014 Madrid, Spain

© International Committee of the Red Cross 2000

This book is in copyright. Subject to statutory exception
and to the provisions of relevant collective licensing agreements,
no reproduction of any part may take place without
the written permission of Cambridge University Press.

First published 2000

Printed in the United Kingdom at the University Press, Cambridge

Typeface Minion 10½/14 pt *System* QuarkXPress™ [SE]

A catalogue record for this book is available from the British Library

ISBN 0 521 78317 8 hardback

CONTENTS

<i>Foreword by Cornelio Sommaruga, President, International Committee of the Red Cross</i>	<i>page xvii</i>
<i>Foreword by Ambassador Jacob S. Selebi, South Africa</i>	<i>xxi</i>
<i>Foreword by Ambassador Johan Molander, Sweden</i>	<i>xxiii</i>
Introduction	1
<p>part 1 from principles to rules: regulating mines up to the 1980 convention on certain conventional weapons</p>	
1 Historical background: the international law governing weapons	7
2 The ICRC's draft rules to protect civilian populations 1955–1956	15
Draft Rules for the Protection of the Civilian Population from the Dangers of Indiscriminate Warfare, Geneva, 1955.	16
Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War, Geneva, 1956.	17
3 Expert contributions to the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts 1973–1977	19
Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects. Report on the Work of the Experts held in Geneva, Switzerland, 26 February–2 March and 12–15 June 1973 (selected chapters)	20
Conference of Government Experts on the Use of Certain Conventional Weapons, Report, First Session held in Lucerne, Switzerland, 24 September–18 October 1974 (selected chapters)	45

Conference of Government Experts on the Use of Certain Conventional Weapons, Report, Second Session held in Lugano, Switzerland, 28 January–26 February 1976 (selected chapters)	60
4 The United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, adopted 10 October 1980	90
A New Step Forward in International Law: Prohibitions or Restrictions on the Use of Certain Conventional Weapons, article by Y. Sandoz	91
Turning Principles into Practice: The Challenge for International Conventions and Institutions, article by Y. Sandoz	105
part 2 the review conference of the 1980 convention on certain conventional weapons: an initial response to the landmine crisis	
1 Introduction	127
2 ICRC Symposium on Anti-Personnel Mines (Montreux Symposium), Montreux, Switzerland, 21–23 April 1993	129
Montreux Symposium Report (selected chapters)	129
3 <i>Mines: A Perverse Use of Technology</i>, May 1993	257
Mines: A Perverse Use of Technology	257
4 The call of the ICRC for a global ban on anti-personnel mines, Geneva, Switzerland, 24 February 1994	264
Statement of Cornelio Sommaruga, President of the ICRC	264
5 Meetings of governmental experts to prepare the Review Conference, 1994–1995	266
Report of the ICRC for the Review Conference of the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be	

Deemed to be Excessively Injurious or to Have Indiscriminate Effects, March 1994	267
Proposals by the ICRC on Prohibitions and Restrictions, Second Session, May 1994	322
Informal Working Paper: Secretariat Functions to Support Effective Implementation of the 1980 Convention on Certain Conventional Weapons (CCW) and its Proposed Amendments, Third Session, August 1994	324
Working Paper Submitted by the ICRC, Fourth Session, January 1995	326
6 ICRC Position Paper No. 1 – February 1995, Landmines and Blinding Weapons: From Expert Group to the Review Conference	328
7 United Nations General Assembly, 1994	332
Statement by the ICRC to the First Committee of the United Nations General Assembly, Forty-Ninth Session, 24 October 1994	332
8 Regional meetings in Africa, 1995	338
Regional Seminar on Land-mines and the 1980 UN Convention on Conventional Weapons, Addis Ababa, 23–24 February 1995	338
Regional Seminar on Landmines and the 1980 Weapons Convention, Harare, 2–3 March 1995, Report and Recommendations	340
Recommendations of the 2nd OAU/ICRC Seminar for African Ambassadors Accredited to Ethiopia, Addis Ababa, 11–12 April 1995	342
Recommandations du Seminaire OUA/CICR sur les Mines Terrestres et la Convention des Nations Unies de 1980 sur Certaines Armes Classiques, Yaoundé, Cameroun, 25–27 Avril 1995	345
9 United Nations International Meeting on Mine Clearance, Geneva, Switzerland, 6 July 1995	349
Statement of Mr. Cornelio Sommaruga, President of the ICRC, Geneva, 6 July 1995	349

10 First Session of the Review Conference of the States Parties to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Vienna, Austria, 26 September–13 October 1995	352
The Issues – the ICRC’s Position	352
Statement of Mr. Cornelio Sommaruga, President of the ICRC	356
ICRC’s Informal Comments on the Chairman’s Rolling Text	359
Chairman’s Rolling Text (full text)	373
Press Release	392
 11 ICRC Position Paper No. 2 – Landmine Negotiations: Impasse in Vienna Highlights Urgency of National and Regional Measures, November 1995	 394
 12 United Nations General Assembly, 1995	 399
Statement by the ICRC to the First Committee of the General Assembly, 26 October 1995	399
 13 Launching of the International Media Campaign against Anti-personnel Landmines by the ICRC and National Red Cross and Red Crescent Societies, Geneva, Switzerland, 22 November 1995	 404
Statement of Cornelio Sommaruga, President of the ICRC	404
 14 The 26th International Conference of the Red Cross and Red Crescent, 1995	 407
Resolution 2 Protection of the civilian population in period of armed conflict	407
 15 Second Session of the Review Conference of the States Parties to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, January 1996	 411
Statement by the ICRC	411

16 Anti-personnel Landmines: Friend or Foe? A Study of the Military Use and Effectiveness of Anti-personnel Mines, commissioned by the ICRC, March 1996	415
Anti-personnel Landmines – Friend or Foe? (Executive Summary)	415
Press Release	423
17 Third Session of the Review Conference of the States Parties to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, April–May 1996	426
Statement of Cornelio Sommaruga, President of the ICRC	426
ICRC News	429
Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II as amended on 3 May 1996)	430
Statement of Mr. Eric Roethlisberger, Vice-President of the ICRC	445
Press Release	448
Landmine Negotiations Conclude with Modest Results, article by P. Herby	449
18 ICRC Position Paper No. 3 – July 1996, Stopping the Landmines Epidemic: From Negotiation to Action	457
19 Making Central America a Mine-free Zone. ICRC Seminar in Managua, Nicaragua, 28–29 May 1996	464
Recommendations adopted by the Managua Seminar, Managua, Nicaragua, 29 May 1994	464
ICRC News	466
ICRC News	467
Resolution: The Council of Foreign Ministers of Central America, 12 September 1996	467

part 3 the ottawa process. from regional
initiatives to an international prohibition
of anti-personnel mines

1	Introduction	471
2	The International Strategy Conference Towards a Global Ban on Anti-personnel Mines, Ottawa, Canada, 3–5 October 1996	473
	Statement of Cornelio Sommaruga, President, ICRC, Geneva	474
	Press Release	479
	Declaration of the Ottawa Conference	480
	Global Plan of Action	481
	Press Release	487
3	United Nations General Assembly, 1996	489
	Statement of the ICRC to the First Committee of the United Nations General Assembly	489
	General Assembly resolution 51/45 S	492
4	ICRC Position Paper No. 4 – December 1997, Landmines: Crucial Decisions in 1997	495
5	Expert Meeting on the Convention for the Prohibition of Anti-personnel Mines, Vienna, Austria, 12–14 February 1997	501
	Press Release	501
	Statement of the ICRC	503
	Informal Information Paper on Dual-Use Munitions	507
6	Fourth International Non-governmental Organization Conference on Landmines: Toward a Mine-Free Southern Africa, Maputo, Mozambique, 25–28 February 1997	509
	Declaration of National Red Cross Societies of Southern Africa	509
	Press Release	510
7	Seminar on Anti-Personnel Landmines and Their Humanitarian Implications, Budapest, Hungary, 7 March 1997	512
	ICRC News	512

8 1997: The Year of a Treaty Banning Anti-personnel Mines? Article by P. Herby	514
9 ICRC Regional Seminar for States of the Southern Africa Development Community (SADC), Harare, Zimbabwe, 21–23 April 1997	519
Anti-personnel Mines: What Future for Southern Africa? Final Declaration of participants	519
10 International Meeting of Experts on the Possible Verification of a Comprehensive International Treaty Prohibiting Anti-Personnel Landmines, Bonn, Germany, 24–25 April 1997	522
Statement of the ICRC	523
ICRC Informal Draft Article on National Implementation Measures	525
11 OAU Conference on a Landmine-free Africa: The OAU and the Legacy of Anti-personnel Mines, Johannesburg, South Africa, 19–21 May 1997	527
The Provision of Assistance to Mine Victims, article by C. Giannon	527
12 Debate on Landmines at the Angolan Parliament, Luanda, Angola, 23 May 1997	535
ICRC Statement on International Political and Legal Efforts on Anti-personnel Landmines	535
13 International Conference for a Global Ban on Anti-personnel Landmines, Brussels, Belgium, 24–27 June 1997	541
Humanitarian Aspects – an Integrated and Coordinated Approach, statement of Cornelio Sommaruga, President, ICRC, Geneva	541
Declaration of the Brussels Conference on Anti-personnel Landmines	545
Press Release	547
14 The Third Austrian Draft of the Convention on the Prohibition of Anti-personnel Mines, May 1997	548

Comments of the ICRC on the Third Austrian Draft (13/5/97) of the Convention on the Prohibition of Anti-personnel Mines	548
Third Austrian Draft (13 May 1997), Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction	553
15 Anti-Personnel Mines: What Future for Asia? Regional Seminar for Asian Military and Strategic Studies Experts, Manila, The Philippines, 20–23 July 1997	562
Final Declaration of Participants	562
16 Diplomatic Conference on an International Total Ban on Anti-personnel Landmines, Oslo, Norway, 1–18 September 1997	567
Press Release	567
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction	568
Press Release	582
Summary of the Convention	583
17 A Global Ban on Landmines: Treaty Signing Conference and Mine Action Forum, Ottawa, Canada, 2–4 December 1997	587
Statement of Cornelio Sommaruga, President, ICRC	587
Press Release	590
18 ICRC Position Paper No. 5 – January 1998, Anti-personnel Mines: Agenda 1998 – From Prohibition to Elimination and Adequate Care for the Victims	591
19 Regional Conference on Landmines, Budapest, Hungary, 26–28 March 1998	596
Final Declaration of Participants	596
ICRC News	599
20 Implementing the Ottawa Treaty: Questions and Answers	601

21 An International Ban on Anti-personnel Mines: History and Negotiation of the ‘Ottawa Treaty’, article by S. Maslen and P. Herby	606
22 The Entry into Force of the Ottawa Treaty	624
Statement of Eric Roethlisberger, Vice-President, ICRC	624
Press Release	627
23 The First Meeting of States Parties to the Ottawa Treaty, Maputo, Mozambique, 3–7 May 1999	629
Statement of Eric Roethlisberger, Vice-President, ICRC	630
ICRC Information Paper on Implementing the Ottawa Treaty: National Legislation	632
ICRC Information Paper on Anti-Vehicle Mines Equipped with Anti-Handling Devices	637
Maputo Declaration	641
24 Regional Conference on Landmines, Zagreb, Croatia, 27–29 June 1999	645
Address by Cornelio Sommaruga, President of the ICRC	645
Chairman’s Summary	649
25 South Asia Regional Seminar on Landmines, Wadduwa, Sri Lanka, 18–20 August 1999	652
Summary Report	652

Historical background: the international law governing weapons

International humanitarian law is the branch of international law concerned with the waging of warfare.¹ It regulates the conduct of hostilities and the treatment of those not actively participating in the conflict (namely, civilians, the wounded and sick, and prisoners of war). It seeks to minimize suffering and ensure that both combatants and civilians are treated humanely. Although international treaties on the subject are of fairly recent origin, practices regulating armed hostilities are evident throughout history. Even before there were States, battles fought between tribes, clans or other groups were often governed by rules to mitigate the effects of armed violence. The ancient texts of many civilizations show that in war, prisoners were not to be killed but taken and well treated; women, children and the elderly were not to be harmed; and warriors should not use barbarous weapons or methods of attack.² While such practices were often founded on grounds of religion, morality or honour, they are the forerunners of the legal regime States have developed to regulate armed conflict.

International humanitarian law is based on the precept that the sole objective of war is to overpower the armed forces of the opponent.³ Men become the legitimate object of attack solely because of their relationship

¹ International humanitarian law was traditionally known as the 'law of war' and today is also commonly referred to as the 'law of armed conflict'.

² See Sumio Adachi, 'A Process to Reaffirmation of International Humanitarian Law – A Japanese View', *Proceedings of the National Defence Academy*, 48 (March 1994), 437–477, on the Japanese code of behaviour 'Bushido', and Nagendra Singh, 'Armed Conflicts and Humanitarian Laws of Ancient India', in Christophe Swinarski (ed.) *Studies and Essays of International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet* (Geneva: Martinus Nijhoff, 1984), pp. 531–536.

³ H. Lauterpacht (ed.), *Oppenheim's International Law*, 7th edn (London: Longmans, 1952) vol. II, pp. 226–227.

with the making of warfare. In his renowned work *The Social Contract* (1762) Jean-Jacques Rousseau formulated one of the law's philosophical footings:

War is in no way a relationship of man with man but a relationship between States, in which individuals are only enemies by accident, not as men but as soldiers'.⁴

From this, States have concluded that, at all times, a distinction must be made between the fighting forces of an adversary and its civilian population. Civilians cannot be the object of attack and the lives of soldiers who are wounded or lay down their weapons must be spared. Like its early antecedents, international humanitarian law is founded upon the precept that the infliction of gratuitous violence offends certain human values.

As the waging of warfare became the province of States, governments sought to ensure that many of the early practices would become legally binding rules and, in the late nineteenth century, began to codify some practices in international treaties. The 'father' of the Red Cross and Red Crescent Movement, Henry Dunant, helped initiate this process by the publication of *A Memory of Solferino* in 1863⁵ as did Professor Francis Lieber, author of a document on the rules of war for government troops in the American Civil War.⁶ Dunant's book drew world attention to the realities of war and the dangers posed by the 'new and frightful weapons of destruction which are now at the disposal of the nations'. His efforts prompted the Swiss government to invite many of the world powers to a diplomatic conference to adopt the first international humanitarian law treaty, the 1864 Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. This helped set in motion the process through which the international community came to ban the use of exploding bullets, poison gas and bacteriological warfare and, more recently, blinding laser weapons and anti-personnel landmines.

Early international humanitarian law treaties did not specifically address deployment of landmines even though ancestors of the devices were used

⁴ Jean Jacques Rousseau, *A Treatise on the Social Contract*, Book I, Ch. IV.

⁵ Henry Dunant, *A Memory of Solferino* (Geneva: International Committee of the Red Cross, 1986).

⁶ Instructions for the Government of Armies of the United States in the Field (General Orders No. 100) commonly referred to as the 'Lieber Code'. In addition to being one of the factors inspiring the codification of the laws of war, it was also the impetus for the development of military manuals.

in the American Civil War. These treaties did, however, prohibit the use of certain types of weapons and established a number of fundamental principles generally applicable to all weapons. Over time these principles were confirmed as part of customary international law and as such apply to all States and every side in an armed conflict.⁷ Of particular relevance to the use of landmines are the following principles:

- The right of the parties to a conflict to adopt means of injuring the enemy is not unlimited.
- It is forbidden to use weapons which 'cause superfluous injury or unnecessary suffering'.
- In the conduct of hostilities, parties to a conflict must always distinguish between civilians and combatants.

From these restrictions, it follows that weapons which inflict injury or suffering greater than what is required to render a soldier *hors de combat* are prohibited. Furthermore, it is forbidden to attack civilian and soldier without discrimination and, consequently, any weapon which is inherently indiscriminate must not be used. While the development of international treaties concerned with anti-personnel landmines is discussed throughout the remainder of this book, it was these principles which were most often at the forefront of the legal discussions about the banning of the weapons. They are recognized in the preamble of the Ottawa treaty as one of the bases for the instrument's prohibitions⁸ and remain valid restrictions on the use of anti-tank and anti-vehicle mines. Below is a brief overview of the international instruments outlining the development of the above-mentioned principles and providing additional historical and legal background for the comprehensive ban which came to fruition in the Ottawa treaty.

⁷ International law is not only found in international treaties. Customary international law is unwritten law and is comprised of the practices which States undertake believing that they are under a legal obligation to do so. It often allows the law to develop without the need for convening formal negotiations but rather through the consensus of action. While a treaty applies only to those States that have formally adhered to it, customary law applies to all States unless they have consistently objected to the practice involved.

⁸ The 11th paragraph of the preamble reads as follows, 'Basing themselves on the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, on the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants'.

The Declaration of St Petersburg 1868⁹

The Declaration of St Petersburg is the first formal international agreement banning the use of a particular weapon. In 1868 the czar of Russia, Alexander II, invited governments to St Petersburg to 'examine the expediency of forbidding the use of certain projectiles in the time of war between civilized nations'. The impetus behind this conference was the development of a bullet which exploded upon impact with 'soft' substances, including the human body. This was an advance on an earlier bullet developed by the Imperial Russian Army, which detonated solely on hard surfaces, the primary purpose of which was to destroy ammunition wagons. When used against humans the new projectile was no more effective than the ordinary bullet yet caused injuries and suffering beyond what was required to render a soldier *hors de combat*. Recognizing the danger that the new bullets posed to the troops of all States, the representatives of nineteen governments adopted the Declaration of St Petersburg.

The declaration prohibits the use of lightweight explosive projectiles, which are defined as bullets weighing less than 400 grams and either explosive or charged with fulminating or inflammable substances. While the declaration is exceptional because it is the first formal agreement prohibiting the use of a certain weapon in war, it is also significant because it established a number of fundamental principles concerned with the conduct of hostilities and which would come to play an important role in the future development of international humanitarian law. In banning these munitions, the participating governments concluded that:

The only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;

For this purpose it is sufficient to disable the greatest possible number of men;

This object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

The employment of such arms would, therefore, be contrary to the laws of humanity.

⁹ Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grams Weight. St Petersburg. Entered into force 11 December 1868.

These principles build upon the canon set forth by Rousseau and from them one can conclude that the parties to a conflict do not have unlimited choice in the way they wage war, and that weapons which cause gratuitous suffering or injury or certain death are not to be used.

In renouncing the use of lightweight explosive projectiles, therefore, governments balanced the military value of such a weapon against humanitarian considerations. This balance would also become an important formula in the future examination of weapons. As was provided in the final paragraph of the declaration:

The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity.

The Brussels Declaration of 1874

Following the meeting in St Petersburg, Alexander II again took the initiative and convened a conference to discuss a possible agreement outlining the laws and customs of war. Fifteen European governments attended the conference in Brussels and considered a draft treaty proposed by the Russian government. While the conference participants adopted the document with minor alterations, it was never ratified by States, and thus, did not become a binding international instrument. Article 12 of the document is particularly notable for including, in addition to the ban on the use of projectiles established in the Declaration of St Petersburg, a prohibition on the use of poison or poisoned weapons and ‘arms, projectiles or material calculated to cause unnecessary suffering’. Although the text never came into force, the conference and the draft document were important steps in the movement towards the codification of the laws of war and many subsequent developments can be traced back to them.

The Hague Conventions of 1899 and 1907

A prohibition on specific types of weapons was also one result of the Hague International Peace Conference of 1899. This conference brought together twenty-six States and sought, among other things, the most effective means of ‘limiting the progressive development of existing armaments’ and ‘the

revision of the declaration concerning the laws and customs of war elaborated in 1874 by the Conference of Brussels, and not yet ratified'.¹⁰ The Hague conference resulted in the conclusion of three conventions and two declarations relevant to the conduct of warfare, all of which were eventually ratified and became international law.

Most relevant to this discussion is Convention II and its regulations¹¹ which cover land warfare. Importantly, the Convention confirms the norms outlined in the Declaration of St Petersburg and those considered at the Brussels Conference.¹² It also affirms an obligation to distinguish between those persons taking part in the hostilities and those who are *hors de combat*.¹³ Two declarations attached to the Convention outlaw the use of specific kinds of weapons. The first (Declaration IV, 3) prohibits the use of projectiles which expand or flatten upon entering the human body.¹⁴ These so-called 'dum-dum' bullets cause injuries similar to the horrific wounds inflicted by the lightweight projectiles proscribed in 1868. They were developed and manufactured by the British in India for use in colonial warfare and their development and use were the subject of intense debate within and outside the United Kingdom.¹⁵

The second declaration (Declaration IV, 2) bans the use of projectiles diffusing asphyxiating or deleterious gases.¹⁶ This reflects an initial attempt to ban gas warfare and its scope was later broadened by the 1925 Geneva Protocol presented below.

The Hague Convention of 1899 is also noteworthy for introducing the so-called 'Martens clause'. This clause, found in the instrument's preamble and named after its author, the Russian delegate de Martens, provides:

¹⁰ Russian Circular note of 30 December 1898.

¹¹ Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land. The Hague, 19 July 1899. Entered into force 4 September 1900.

¹² See Article 22 and Article 23 (e).

¹³ The Convention requires that prisoners of war are to be treated humanely (Article 4) and prohibits a declaration that no quarter will be given (Article 23(d)). In Article 21 it also affirms the obligations upon belligerents under the Convention for the Amelioration of the Wounded in Armies in the Field. Geneva, adopted 22 August 1864. Entered into force 22 June 1965.

¹⁴ Declaration (IV, 3) concerning Expanding Bullets. The Hague, 29 July 1899. Entered into force 4 September 1900.

¹⁵ Edward M. Spiers, 'The Use of Dum-Dum Bullets in Colonial Warfare', *Journal of Imperial and Commonwealth History* 4 (1975), 3–14. The bullets were so called because they were manufactured at the cantonment of Dum-Dum, located several miles north-east of Calcutta.

¹⁶ Declaration (IV, 2) concerning Asphyxiating Gases. The Hague, 29 July 1899. Entered into force 4 September 1900.

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience.

The Martens clause establishes a legal safety net whereby soldiers and civilians alike remain protected by basic humanitarian principles in the event that the existing rules of international law are inadequate or non-existent. It makes clear that, in the absence of positive rules, the conduct of warfare shall not be left to the arbitrary judgement of military commanders.

In 1907, a second Hague Peace Conference was held to continue the work of its predecessor. At this meeting Convention II on land warfare was slightly revised and again adopted.¹⁷ Yet, for the most part, the rules and principles discussed above remained unchanged. The declarations on expanding bullets and asphyxiating projectiles were not reconsidered at the 1907 conference and remained as adopted in 1899.

1925 Geneva Protocol on Poisonous and Asphyxiating Gases¹⁸

Declaration II of the Hague Convention of 1899 prohibited the use of projectiles diffusing asphyxiating or deleterious gases. Nonetheless, during the First World War various types of chemical agents were used in gas form and dispersed into the wind through canisters on the ground as opposed to projectiles. Thus, Declaration II was not deemed to have been violated, at least in purely technical terms. However, the suffering which such toxins produced on the ground among the troops of all sides provoked outrage in both public and governmental circles. Subsequently, an international conference convened by the League of Nations adopted the 1925 Geneva Protocol which broadened the prohibition on gas warfare. The Protocol banned the 'use in war of asphyxiating, poisonous or other gases and of all analogous liquids, materials or devices'. As the instrument recognizes that such weapons have 'been justly condemned by the general opinion of the

¹⁷ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulation concerning the Laws and Customs of War on Land. Entered into force 26 January 1910.

¹⁸ Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva 17 June 1925. Entered into force 8 February 1928.

civilized world' and that their use is prohibited 'in Treaties to which the majority of Powers of the world are Parties', it supports and develops the principles and rules of earlier instruments. Furthermore, and with some foresight, the Protocol also banned the use of bacteriological methods of warfare, a manner of warfare which had not been extensively developed at that time.

For the most part, the treaty law regulating the use of weapons and the conduct of hostilities remained unchanged until the Additional Protocols to the 1949 Geneva Conventions, which were concluded in 1977. Nonetheless, the rules and principles that had been established comprise some of the most fundamental norms of international humanitarian law and, as was recognized by the International Military Tribunal at Nuremberg, they are part of the customary international law applicable to all States.¹⁹ They reflect the early developments of the international law regulating the use of weapons in armed conflict and are the framework within which States, through the Ottawa treaty, came to ban anti-personnel landmines.

¹⁹ *Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg*, Vol. XXII, p. 497. See also International Court of Justice, *Legality of the threat or use of nuclear weapons*, Advisory Opinion of 8 July 1996.